

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GREGORY JOE LUNSFORD JR.,  
*Petitioner.*

No. 2 CA-CR 2016-0225-PR  
Filed July 26, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Maricopa County  
No. CR2010048543001DT  
The Honorable Roger E. Brodman, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Susan L. Luder, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Gregory Joe Lunsford Jr., San Luis  
*In Propria Persona*

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Kelly<sup>1</sup> concurred.

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ESPINOSA, Judge:

¶1 Petitioner Gregory Lunsford Jr. seeks review of the trial court's order dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>2</sup> "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 After a jury trial, Lunsford was convicted of possession of narcotic drugs for sale, possession of marijuana, and two counts each of misconduct involving weapons and possession of drug paraphernalia. The trial court sentenced Lunsford to concurrent, presumptive prison terms, the longest of which is 15.75 years, and this court affirmed his convictions and sentences on appeal. *State v. Lunsford*, No. 1 CA-CR 11-0837 (Ariz. App. Dec. 20, 2012) (mem. decision). Lunsford sought post-conviction relief, and appointed counsel filed a notice stating he had "found no viable issues" to raise in post-conviction proceedings. Lunsford then filed a pro se petition, raising several claims of ineffective assistance of trial, appellate, and Rule 32 counsel.

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

<sup>2</sup>Lunsford mistakenly stated he is challenging the ruling "entered on September 4, 2014," rather than August 7, 2014.

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¶3 On review, Lunsford essentially reasserts all of the arguments he raised in his petition below, without explaining how the trial court abused its discretion in denying those claims. See Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain “reasons why the petition should be granted”). Those arguments include the following: trial counsel was ineffective for not contacting certain witnesses, not moving to preclude evidence of a homicide, permitting Lunsford to appear in an “\$8,000 [] suit,” not procuring independent drug analysis testing, not challenging the entire search and seizure, not challenging the sufficiency of the evidence for the charges based on weapons misconduct and narcotic drugs for sale, and not filing a motion for new trial; both trial and appellate counsel were ineffective for not objecting to the amendment of count two of the indictment and for not challenging the multiplicitous and duplicitous nature of the indictment; and, Rule 32 counsel was ineffective for not challenging trial counsel’s ineffectiveness or the age of the prior convictions used at sentencing. Lunsford also raises various claims not raised in his petition below, which we will not consider on review.<sup>3</sup> See Ariz. R. Crim. P. 32.9(c) (party may petition “for review of the actions of the trial court”).

¶4 In a thorough, well-reasoned ruling, the trial court identified the claims Lunsford had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order.<sup>4</sup> See *State v. Whipple*, 177 Ariz.

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<sup>3</sup>It appears Lunsford acknowledged this fact in his reply to the petition for review.

<sup>4</sup>We note a minor error in the trial court’s ruling which does not affect our decision: on page six, it appears the court intended to cite *State v. Herrera*, 183 Ariz. 642, 647, 905 P.2d 1377, 1382 (App. 1995), rather than “*State v. Alford*, 157 Ariz. 642, 647, 905 P.2d 1377 (App. 1995).” We additionally note that, in its dismissal of Lunsford’s claim of ineffective assistance of Rule 32 counsel, the court did not mention that as a non-pleading defendant, Lunsford is not in any event entitled to effective representation in his first Rule 32 proceeding. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307

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272, 274, 866 P.2d 1358, 1360 (App. 1993). Lunsford has not persuaded us on review that the court's resolution of those claims was incorrect. No purpose would be served by restating the court's ruling in its entirety here; rather, we adopt it. *See id.*

¶5 Because Lunsford has not sustained his burden of establishing the trial court abused its discretion in denying his petition, although we grant review, relief is denied.

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P.3d 1013, 1014 (App. 2013) (non-pleading defendants "have no constitutional right to counsel in post-conviction proceedings").